IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.125 OF 2004

Shri Rajaram Bapu Kamble & Anr. : Petitioners
(Orig. Defendants)

V/s.

Smt.Laxmibai Shamrao Kamble & Ors. : Respondents
(Orig.Plaintiff & Deft. 2 & 3, respectively)

...

Mr.V.A. Gangal for the petitioners.

Mr.P.D.Dalvi for respondent no.1.

...

CORAM : S.A. BOBDE, J.

March 9, 2005.

P.C.:

1. This is a defendants' Writ Petition against the order of the 5th Addl. District Judge, Kolhapur, confirming the injunction granted by the Civil Judge, Junior Division, Malkapur. The respondent no.1, who is the widow of the petitioners' brother, sued for partition. She also sought an injunction, inter alia, restraining the petitioners from obstructing her right of way over the suit property. The trial Court granted an injunction restraining the

petitioners from obstructing respondent no.1's right of way over the suit property and further restrained the petitioners from creating any third-party interest.

2. The petitioners carried the matter in appeal. The appeal Court has dismissed the appeal.

3. Mr.Gangal, learned counsel for the petitioners, submitted that the property in question over which respondent no.1 claims an injunction was purchased by the petitioners from one Mangalekar, who had earlier purchased it from the petitioners' father and, therefore, it is the petitioners who have acquired the property. This submission, though plausible, does not appear to be correct. Prima facie, it appears from the sale deed that the petitioners' father sold the undivided share to Mangalekar vide sale deed dated 16.12.1978. The petitioners appear to have purchased it from Mangalekar.

4. There is no evidence of partition of the property between respondent no.1's husband and the petitioners. In these circumstances, I find that the order of the Court below is not vitiated by any error of law apparent on the face of the record or perversity. In the circumstances, there is no merit in the petition.

5. The following injunction shall operate during the pendency of the suit:-

The petitioners shall be restrained from obstructing respondent no.1’s right of way over the suit property and shall not transfer the suit property or create any third party rights. Needless to say that all contentions on merits are kept open. The trial Court shall decide the suit without being influenced by any observations of this Court.

Sd/-

S.A. BOBDE, J.